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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. RICHARD FREEMAN TULLEYS, Defendant and Appellant.	D074713 (Super. Ct. No. MCW1500036)

APPEAL from a judgment of the Superior Court of Riverside County, Ronald L. Taylor, Judge. Affirmed.

Rudy Kraft, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina and Annie Featherman Fraser, Deputy Attorneys General, for Plaintiff and Respondent.

Richard Tulleys appeals after a bench trial in which the court adjudicated him a sexually violent predator (SVP) under the Sexually Violent Predators Act (SVPA) (Welf.

& Inst. Code, § 6600 et seq.) and ordered his indeterminate commitment to the State Department of State Hospitals.[1] Tulleys contends that the trial court prejudicially erred in admitting certain exhibits and in allowing an expert to testify about certain facts without an applicable hearsay exception. To the extent any of Tulleys's evidentiary objections are forfeited because his trial counsel did not raise them, Tulleys also contends that he received ineffective assistance of counsel.

We conclude that although certain evidence and expert testimony was admitted without an applicable hearsay exception, Tulleys has not established the necessary prejudice to obtain appellate relief or to establish ineffective assistance of counsel. We accordingly affirm the judgment.

I.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Overview of the SVPA*

To put the proceedings against Tulleys into context, we begin with an overview of the SVPA.

The SVPA allows for the involuntary civil commitment of certain offenders following the completion of their prison terms who are found to be sexually violent predators. Under the SVPA, the People may file a petition to seek to confine and treat SVPs "until their dangerous disorders recede and they no longer pose a societal threat."

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1 The trial court's order of commitment mistakenly referred to the State Department of Mental Health, which is the former name of the State Department of State Hospitals. (*People v. Superior Court (Vasquez)* (2018) 27 Cal.App.5th 36, 42, fn. 2.)

(*Moore v. Superior Court* (2010) 50 Cal.4th 802, 815 (*Moore*).) "The special proceedings that ensue after the People file such a petition are civil in nature, but an SVP defendant is afforded many of the same procedural protections afforded criminal defendants, such as the right to court-appointed counsel and experts, the right to a unanimous jury verdict, the right to testify in one's defense, and the right to have the People prove his or her SVP status beyond a reasonable doubt." (*People v. Burroughs* (2016) 6 Cal.App.5th 378, 383-384 (*Burroughs*).)

"An alleged SVP is entitled to a jury trial, at which the People must prove three elements beyond a reasonable doubt: (1) the person has suffered a conviction of at least one qualifying 'sexually violent offense,' (2) the person has 'a diagnosed mental disorder that makes the person a danger to the health and safety of others,' and (3) the mental disorder makes it likely the person will engage in future predatory acts of sexually violent criminal behavior if released from custody. ([Welf. & Inst. Code,] §§ 6600, 6603, 6604; *People v. Shazier* (2014) 60 Cal.4th 109, 126; *People v. McKee* (2010) 47 Cal.4th 1172, 1185.)" (*People v. Yates* (2018) 25 Cal.App.5th 474, 477 (*Yates*).)

In establishing the first element, a crime is a "qualifying 'sexually violent offense' " (*Yates*, *supra*, 25 Cal.App.5th at p. 477) if it is listed in Welfare and Institutions Code, section 6600, subdivision (b), and—unless committed on a child under age 14—is "committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person, . . . and result[s] in a conviction or a finding of not guilty by reason of insanity." (Welf. & Inst. Code, § 6600, subd. (b).) However, "[i]f the victim of

an underlying offense that is specified in subdivision (b) of Section 6600 is a child under the age of 14, the offense shall constitute a 'sexually violent offense' " without the need to establish any additional facts about the nature of the offense. (Welf. & Inst. Code, § 6600.1.)

The SVPA contains an exception to the hearsay rule that applies when the People introduce evidence to establish the existence of a sexually violent offense to satisfy the first element, allowing the broad use of documentary evidence. (*People v. Otto* (2001) 26 Cal.4th 200, 206-209; Welf. & Inst. Code, § 6600, subd. (a)(3).) "Under [Welfare and Institutions Code] section 6600, subdivision (a)(3), the People may prove the first element—the existence and details underlying the commission of the predicate offense(s)—'by introducing "documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of State Hospitals." ' " (*Yates, supra,* 25 Cal.App.5th at p. 477.)[2] This "broad hearsay exception for the documentary evidence described in the statute" exists "in order 'to relieve victims of the burden and trauma of

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2 In relevant part, Welfare and Institutions Code section 6600, subdivision (a)(3) states, "Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of State Hospitals." (Welf. & Inst. Code, § 6600, subd. (a)(3).)

testifying about the details of the crimes underlying the prior convictions,' which may have occurred many years in the past." (*Id*. at pp. 477-478.)

"The second and third elements of the SVPA require a link between a finding of future dangerousness and 'a currently diagnosed mental disorder characterized by the inability to control dangerous sexual behavior.' (*Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1158 (*Hubbart*).) Commitment as an SVP requires proof that a defendant 'is likely to engage in future predatory acts' of sexually violent criminal behavior. (*People v. Hurtado* (2002) 28 Cal.4th 1179, 1190.) A person is likely to engage in sexually violent criminal behavior if 'the person charged as a sexually violent predator poses a substantial danger, that is, a serious and well-founded risk, of committing a sexually violent predatory crime if released from custody.' (*People v. Roberge* (2003) 29 Cal.4th 979, 988-989.)" (*People v. White* (2016) 3 Cal.App.5th 433, 448.)

B. *The Proceedings Against Tulleys*

On August 13, 2015, the People filed a petition seeking Tulleys's commitment as an SVP. The court held a hearing in April 2016, at which it found probable cause. Tulleys waived his right to a jury trial, and the matter proceeded to a trial before the court.

1. *Documentary Evidence*

During the bench trial, the People presented seven exhibits, all of which the trial court admitted into evidence. The admissibility of those exhibits is a central issue in this appeal.

Exhibit 1 is a certified packet of documents prepared by the Department of Corrections and Rehabilitation pursuant to Penal Code section 969b (hereafter, "the 969b packet").[3] As described in the certification by the custodian of records accompanying the 81 pages of documents, the 969b packet generally consists of "copies of the commitment, photograph, fingerprints and Cumulative Case Summary Chronological History and/or Movement History" related to Tulleys. Specifically, the packet contains (1) printouts of certain administrative entries concerning Tulleys while in prison, including location transfers and, as relevant here, an entry on August 7, 2015, identifying an "MDO/SVP Hold" for Tulleys and stating, "Positive for SVP. Do not parole without contact with county for Civil Commitment Proceedings;" (2) abstracts of judgment for six convictions;[4] (3) a "Sentence Data Sheet" showing Tulleys's 2005, 2008 and 2015 convictions, the sentences for those convictions, and Tulleys's receipt or loss of credits while in prison; and (4) Tulleys's photographs and fingerprints;

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[3] In a criminal case, Penal Code section 969b provides for the introduction into evidence of certified prison records "[f]or the purpose of establishing prima facie evidence of the fact that a person being tried for a crime or public offense under the laws of this State has been convicted of an act punishable by imprisonment in a state prison, county jail or city jail of this State, and has served a term therefor in any penal institution . . . ." (Pen. Code, § 969b.)

[4] The convictions reflected in the abstracts of judgment were as follows: (1) convictions for indecent exposure in 1997, 2013 and 2015 (Pen. Code, § 314, subd. (1)); (2) a conviction for continuing sexual abuse of a child in 1991 (Pen. Code, § 288.5); (3) a conviction for annoying or molesting a child under the age of 18 in 1999 (Pen. Code, § 647.6, subd. (a)); and (4) a conviction for a lewd act on a child under the age of 14 in 2005 (Pen. Code, § 288, subd. (a)).

Exhibit 2 contains certified court records from the San Bernardino County Superior Court relating to Tulleys's conviction in 2005 for committing a lewd act on a child under the age of 14 (Pen. Code, § 288, subd. (a).) Specifically, the records consist of the felony complaint, court minutes, and the form reflecting the guilty plea.

Exhibit 3 contains certified court records from the San Bernardino County Superior Court relating to Tulleys's conviction in 2005 for continuing sexual abuse of a child in 1991 (Pen. Code, § 288.5). Specifically, the records consist of the felony complaint and amended felony complaint, the court docket, a warrant for Tulleys's arrest, orders remanding Tulleys into custody, and the form reflecting the guilty plea.

Exhibit 4 contains certified court records from the San Bernardino County Superior Court relating to Tulleys's conviction in 1999 for annoying or molesting a child under the age of 18 (Pen. Code, § 647.6, subd. (a)). Specifically, the records consist of the felony complaint, court minutes, the form reflecting the guilty plea, and the abstract of judgment.

Exhibit 5 contains certified court records from the Riverside County Superior Court relating to Tulleys's conviction in 2013 for indecent exposure (Pen. Code, § 314, subd. (1)), which was alleged to have occurred in 2008. Specifically, the records consist of the felony complaint and the information, court minutes, the form reflecting the guilty plea, and the abstract of judgment.

Exhibit 6 is a probation officer's report prepared prior to Tulleys's conviction in 1997 for indecent exposure (Pen. Code, § 314, subd. (1)) in Los Angeles County Superior Court. Unlike the other exhibits, there is no indication in the record that the probation

officer's report was certified as an official record by a clerk of the superior court. The probation officer's report contains a narrative of the facts of the alleged offense. According to the narrative,

> "On December 5, 1996 at approximately 6:30 a.m. three young girls (seventh and eighth graders) were walking to the bus stop. They heard the defendant say something to them from a construction site directly across the street. They looked and the defendant was standing in the doorway of a portable toilet, the door was open and the defendant had his pants unzipped. As the defendant was facing the three children, he waved his flaccid penis from side to side, while shouting profanities. The children were unsure exactly what the defendant was saying, stating only that they heard him say 'bitch' and 'asshole.' [¶] After seeing the defendant exposing himself, the children turned away and began walking faster towards the bus stop. They looked back and saw that the defendant had followed them across the street and was directly behind them at a distance of about 30 or 40 feet. They walked faster. A short time later, the[y] looked back and the defendant was no longer there. . . . [¶] While interviewing the children, one of the children told a deputy about a prior incident in which the defendant exposed himself. The incident occurred on December 3, 1996 at approximately 6:30 a.m. The child was walking to the bus stop alone. When she was directly across from the construction site, she saw the defendant sitting in a pickup truck. The defendant was in the driver's seat and had his pants unzipped and was stroking his penis. . . . The defendant was reportedly 'groaning' as the child walked past."

Exhibit 7 contains certified court records from the Los Angeles County Superior Court relating to Tulleys's conviction in 1997 for indecent exposure (Pen. Code, § 314, subd. (1)) from the same case as the probation officer's report contained in Exhibit 6. Specifically, the records consist of the information and the felony complaint, which allege two counts, based on the two incidents described in the probation officer's report, namely Tulleys's conduct on December 3rd (count 1) and December 5th (count 2) in 1996; court minutes, including minutes reflecting Tulleys's guilty plea to count 1; and the

abstract of judgment. According to the documents, count 1, to which Tulleys pled guilty, concerned the incident on December 3rd.

2. *Victim Testimony*

To establish that Tulleys incurred two qualifying sexually violent offenses that satisfy the first element required by the SVPA, the People presented testimony from two victims of Tulleys's crimes.[5]

Jane Doe 1 testified at trial that from approximately 1988 to 1991, when she was approximately eight years old through 10 years old, she lived with Tulleys, who was her mother's boyfriend. On many occasions, Tulleys would touch Jane Doe 1's vagina and breasts and would force Jane Doe 1 to masturbate him until he ejaculated. Tulleys would also watch Jane Doe 1 through a peephole while she was taking a shower. Tulleys threatened Jane Doe that he would kill her and her family if she told anyone what he was doing. According to Jane Doe 1, the molestation went on for "years" until she told an adult about it when she was 10 years old. As reflected by the certified court records in Exhibit 3, and the abstract of judgment appearing in the 969b packet, Tulleys pled guilty in September 1991 to one count of continuous sexual abuse (Pen. Code, § 288.5) based on his molestation of Jane Doe 1, and was sentenced to a six-year prison term.

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5 Because Tulleys pled guilty to both offenses, there were no trial transcripts or other documentation for the People to introduce pursuant to Welfare and Institutions Code section 6600, subdivision (a)(3) to establish the details of the crimes that would prove they qualified as sexually violent offenses. Accordingly, the People presented the testimony of Tulleys's victims, along with testimony from the victims' mothers, to provide additional details of the crimes.

Jane Doe 2 testified that in 2004 when she was eight years old, Tulleys was a family friend who came to her home on one or more occasions. Jane Doe 2 testified that when alone with her in the living room Tulleys asked her if she had ever seen a penis. When Tulleys started to unbutton his pants, Jane Doe 2 walked out of the room. In another incident, Tulleys grabbed Jane Doe 2's crotch from behind and picked her up. Tulleys held Jane Doe 2 in that position for several minutes with his hand tightly around the area of her vagina, hurting her. Other adults were in the room but apparently did not notice what Tulleys was doing to Jane Doe 2. A few months later, Jane Doe 2 disclosed Tulleys's inappropriate behavior. As reflected in the certified court records in Exhibit 2 and documents in the 969b packet, based on his conduct toward Jane Doe 2, Tulleys pled guilty in August 2005, to one count of committing a lewd act upon a child (Pen. Code, § 288, subd. (a)), and was sentenced to prison for a term of 12 years.

3. *Expert Testimony*

Dr. Roger Karlsson, a psychologist, testified that he evaluated Tulleys in July 2015.[6] In performing Tulleys's evaluation, Dr. Karlsson reviewed all seven exhibits we have described above.

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6 Dr. Karlsson testified that during his interview of Tulleys, Tulleys was wearing a protective vest and was in administrative segregation because he had "allegedly recently exposed himself to some staff." Although no mention was made during trial of Tulleys's October 15, 2015 conviction for indecent exposure that is referenced in the 969b packet, Dr. Karlsson was likely referring to the events that led to that conviction, as the documents in the 969b packet state the date of the offense was June 13, 2015, and Tulleys was interviewed by Dr. Karlsson on July 21, 2015.

Dr. Karlsson testified that Tulleys met all three statutory elements to be classified as an SVP.[7] With respect to the first element, Dr. Karlsson identified the 2005 conviction for committing a lewd act on a child (Pen. Code, § 288, subd. (a)) involving Jane Doe 2 and the 1991 conviction for continuous sexual abuse (Pen. Code, § 288.5) involving Jane Doe 1 as qualifying sexually violent offenses. According to Dr. Karlsson, Tulleys admitted that with respect to the 1991 conviction, he made Jane Doe 1 masturbate him several times, although he claimed the molestation occurred over a limited two-month period. With respect to the 2005 conviction, Tulleys told Dr. Karlsson that he picked up Jane Doe 2 and put her in his lap.

Addressing the second element under the SVPA, Dr. Karlsson diagnosed Tulleys with two mental disorders that predisposed him to commit criminal sexual acts. Specifically, Dr. Karlsson diagnosed Tulleys with (1) pedophiliac disorder, meaning that he was sexually attracted to children; and (2) exhibitionist disorder, meaning that he had "sexual urges or fantasies that are recurrent and intense about exposing his private parts to unsuspecting people that are nonconsenting."

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7 As we have explained, the People must prove three elements beyond a reasonable doubt in a proceeding under the SVPA: "(1) the person has suffered a conviction of at least one qualifying 'sexually violent offense,' (2) the person has 'a diagnosed mental disorder that makes the person a danger to the health and safety of others,' and (3) the mental disorder makes it likely the person will engage in future predatory acts of sexually violent criminal behavior if released from custody." (*Yates, supra,* 25 Cal.App.5th at p. 477.)

Dr. Karlsson explained that in diagnosing Tulleys, he considered Tulleys's convictions for indecent exposure (Pen. Code, § 314, subd. (1)). Dr. Karlsson testified about the circumstances surrounding two of those convictions.

First, Dr. Karlson described what Tulleys told him about the circumstances surrounding the 2013 indecent exposure conviction.[8] As Tulleys explained, while he was in prison, a female correctional officer claimed he was looking into her eyes while masturbating. Tulleys stated that he was not masturbating, but his "private part" may have accidentally fallen out of his boxers while he was in bed.

Second, Dr. Karlsson testified about what Tulleys told him regarding the 1997 conviction for indecent exposure. According to Tulleys, he was working as a carpenter at a construction site when he decided to expose his penis to people walking past an outhouse. He flashed his penis to a "girl" who was walking by the outhouse, but he could not assess her age. Tulleys stated that he wanted the girl to see his penis, but he hid his face. Tulleys said that after the girl went to the construction foreman and complained, the incident was reported to the police. During his testimony, Dr. Karlsson also described additional facts he had learned about the 1997 indecent exposure incident by reading the probation officer's report that was admitted into evidence as Exhibit 6. Dr. Karlsson stated that he found out from the report that the girls were in seventh or

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8 The question posed by the People to Dr. Karlsson referred to an "indecent exposure conviction from 2009." According to our review of the exhibits, Tulleys did not incur a conviction for indecent exposure in 2009, Tulleys was convicted in 2013 for an act of indecent exposure that occurred in 2008. It appears that Dr. Karlsson was referring to the 2013 conviction.

eighth grade. Dr. Karlson also explained "that there were three girls, according to the records, not just one. And also, that [Tulleys] apparently waved his penis from side to side in front of the girls and also was shouting profanities to them while he was doing this, and it also seems like he followed them when they were walking away."

In evaluating Tulleys, Dr. Karlsson also considered Tulleys's 1999 conviction for annoying or molesting a child. (Pen. Code, § 647.6, subd. (a).) According to Dr. Karlsson, the records that he reviewed relating to that offense were not informative, but Tulleys made a statement to him about it. According to Tulleys, there was a "well-developed" female in another hotel room. He wrote her a note and put it under her door, but she gave the note to her parents, and they called the police. According to Dr. Karlsson, the conviction was significant because, regardless of the underlying facts, it was another sex offense, and thus would figure into an assessment of the continuing risk posed by Tulleys for future sexually violent behavior.

Regarding his conclusion on the third element, namely that Tulleys was likely to engage in future predatory acts of sexually violent criminal behavior if released from custody, Dr. Karlsson explained that, along with other things, he relied on the actual risk assessment and the dynamic risk assessment that he performed on Tulleys. Specifically, under the Static-99R, he scored Tulleys with a "7", which put him in the high-risk group for recidivism. Under the Structured Risk Assessment, Forensic Version test, Tulleys scored "2.8," which was in the "routine level" for sex offenders. Based on all of the available information, Dr. Karlsson concluded that Tulleys poses a substantial risk of

predatory behavior toward children. Dr. Karlsson conducted an updated evaluation of Tulleys in July 2016, in which he reached the same conclusion.

C. *Trial Court Findings*

Based on the evidence presented, the trial court found beyond a reasonable doubt that Tulleys is an SVP as defined by the SVPA, and it ordered Tulleys's indeterminate commitment to a state mental hospital.

II.

DISCUSSION

Tulleys contends that the trial court erred in admitting certain exhibits or portions of exhibits into evidence, and that the trial court erred in allowing Dr. Karlsson to testify to certain facts that appear in those documents. He also contends that, to the extent his trial counsel failed to preserve certain evidentiary objections, his trial counsel was ineffective, and the judgment should be reversed on that basis. To evaluate Tulleys's arguments we first identify the evidence and testimony that he contends was incorrectly admitted into evidence and discuss whether his challenges have merit.[9] After identifying any evidentiary challenges that have merit, we will then consider which challenges were preserved for appeal, and which, instead, we must analyze in the context of the ineffective assistance of counsel claim that Tulleys asserts in this appeal.

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9 In deciding whether the evidentiary challenges have merit, we are guided by the principle that "an appellate court applies the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence, including one that turns on the hearsay nature of the evidence in question." (*People v. Waidla* (2000) 22 Cal.4th 690, 725.)

A. *Evidence That Tulleys Contends Should Not Have Been Admitted*

1. *Documentary Exhibits*

a. *Court Records in Exhibits 2 Through 7*

We first examine whether there is any merit to Tulleys's position that the court records comprising Exhibits 2 through 7 should not have been admitted because they constitute inadmissible hearsay.[10] " 'Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." (Evid. Code, § 1200, subd. (a).) "Except as provided by law, hearsay evidence is inadmissible." (Evid. Code, § 1200, subd. (b).) "Documents . . . are often hearsay because they are prepared by a person outside the courtroom and are usually offered to prove the truth of the information they contain. Documents may also contain multiple levels of hearsay." (*People v. Sanchez* (2016) 63 Cal.4th 665, 674-675 (*Sanchez*).)

Tulleys acknowledges that portions of the records in Exhibits 2 and 3 were properly admitted under the hearsay exception set forth in Welfare and Institutions Code

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10 Tulleys also appears to contend that certain information contained in Exhibits 2 through 7 was not relevant to any issue presented at trial, and that the information should have been excluded or redacted from the documents on that basis. According to Tulleys, the purportedly irrelevant information in the court files consisted of: (1) entries in the guilty plea forms in Exhibits 2 and 3 showing "[t]he fact that [Tulleys] was charged with other offenses and was aware of the potential sentence he could receive;" (2) information in Exhibit 3 "relating to [Tulleys's] bail" and docket entries that did not reference the charge for which he was convicted; and (3) the abstracts of judgment because they "merely proved the existence of the conviction, not the underlying behavior." We reject the relevancy challenge. As the trial court was within its discretion to conclude, because Dr. Karlsson testified that he relied on Exhibits 2 through 7 in reaching his opinions, the content of those exhibits was relevant to the issues presented at trial.

section 6600, subdivision (a)(3) because those portions related to a qualifying sexually violent offense necessary to establish the first element required under the SVPA. However, he contends that some of the information in the documents did not qualify for admission under that code section because the information did not relate to "[t]he existence of any prior convictions" or "[t]he details underlying the commission of an offense that led to a prior conviction" (Welf. & Inst. Code, § 6600, subd. (a)(3)). According to Tulleys, the inadmissible information consisted of other counts to which Tulleys did not plead guilty, information about "sentencing, fines [and] priors" or "documents relating to . . . bail." He asserts that the information should have been redacted or removed from the exhibits.

With respect to the court records contained in Exhibits 4 through 7, Tulleys contends that all of the documents were inadmissible hearsay because they concerned Tulleys's convictions that were not qualifying sexually violent offenses, and thus not admissible under the hearsay exception in Welfare and Institutions Code section 6600, subdivision (a)(3).

We reject Tulleys's hearsay challenge to Exhibits 2, 3, 4, 5 and 7. Those exhibits fall within the hearsay exception contained in Evidence Code section 452.5, subdivision (b)(1) for certified court records. Section 452.5, subdivision (b)(1) states that: "An official record of conviction certified in accordance with subdivision (a) of Section 1530, or an electronically digitized copy thereof, is admissible under Section 1280 to prove the commission, attempted commission, or solicitation of a criminal offense, prior conviction, service of a prison term, or other act, condition, or

event recorded by the record." (Evid. Code, § 452.5, subd. (b)(1).)[11] After Evidence Code section 452.5 was enacted in 1996, case law recognized that the provision "creates a hearsay exception allowing admission of qualifying court records to prove not only the fact of conviction, but also that the offense reflected in the record occurred," and that the language of the provision "is clear and unambiguous." (*People v. Duran* (2002) 97 Cal.App.4th 1448, 1460-1461 (*Duran*).) Under the plain language of Evidence Code section 452.5 "certified records of conviction fall within the definition of official records contained in Evidence Code section 1280 (the official records exception to the hearsay rule), and are per se admissible as such. Moreover, a certified official record of conviction is admissible to prove not only the *fact* of a conviction, but also that the offense reflected in the record occurred." (*Duran*, at p. 1461.)

Here, because the documents appearing in Exhibits 2, 3, 4, 5 and 7 are all certified court records pertaining to Tulleys's prior convictions, they are all admissible under the exception to the hearsay rule set forth in Evidence Code section 452.5, subdivision (b)(1)

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11 Evidence Code section 1530, subdivision (a), provides, in pertinent part, "(a) A purported copy of a writing in the custody of a public entity, or of an entry in such a writing, is prima facie evidence of the existence and content of such writing or entry if: [¶] . . . (2) The office in which the writing is kept is within the United States . . . , and the copy is attested or certified as a correct copy of the writing or entry by a public employee, or a deputy of a public employee, having the legal custody of the writing." (Evid. Code, § 1530, subd. (a)).

Evidence Code section 1280 provides, "Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition, or event if all of the following applies: [¶] (a) the writing was made by and within the scope of duty of a public employee. [¶] (b) the writing was made at or near the time of the act, condition, or event. [¶] (c) The sources of information and method and time of preparation were such as to indicate its trustworthiness." (Evid. Code, § 1280.)

to show that Tulleys committed the crimes reflected in the records of conviction and to prove any "prior conviction, service of a prison term, or other act, condition, or event recorded by the record." (Evid. Code, § 452.5, subd. (b)(1).) The hearsay exception covers every fact established by the court documents appearing in Exhibit 2, 3, 4, 5 and 7, including Tulleys's sentences, fines, prior convictions, the existence of other counts alleged against Tulleys in the felony complaints, and all other court proceedings reflected in the documents.

In his reply brief, Tulleys contends that Evidence Code section 452.5, subdivision (b)(1) does not apply here because the provision only concerns the admissibility of *electronic* court records, which are not at issue in this case. Tulleys's argument is based on *subdivision (a)* of Evidence Code section 452.5, and the legislative history relating to that subdivision. Subdivision (a) states, "The official acts and records specified in subdivisions (c) and (d) of Section 452 include any computer-generated official court records, as specified by the Judicial Council, that relate to criminal convictions, when the record is certified by a clerk of the superior court pursuant to Section 69844.5 of the Government Code at the time of computer entry." (Evid. Code, § 452.5, subd. (a).)[12] Focusing on subdivision (a), Tulleys argues that "in enacting [Evidence Code section 452.5] the Legislature expressed a clear intent to deal with

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12 Subdivisions (b) and (c) of Evidence Code section 452 allow a court to take judicial notice of "(b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States" and "(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." (Evid. Code, § 452.)

electronic records and nothing else." We reject Tulleys's argument. The plain language of Evidence Code section 452.5, subdivision (b)(1) makes clear that it creates a hearsay exception for electronic records *and* officially certified hardcopy records, as it states that "[a]n official record of conviction certified in accordance with subdivision (a) of Section 1530, *or an electronically digitized copy thereof* is admissible under" the hearsay exception for public records set forth in Evidence Code section 1280 "to prove the commission, attempted commission, or solicitation of a criminal offense, prior conviction, service of a prison term, or other act, condition, or event recorded by the record." (Evid. Code, § 452.5, subd. (b)(1), italics added.) On its face, because it refers to *both* kinds of records, the hearsay exception for certified court records applies to documents that are *either* electronic records or hard-copy certified records. (Cf. *People v. Skiles* (2011) 51 Cal.4th 1178, 1186 ["under sections 1530 and 452.5, subdivision (b), a properly certified copy of an official court record is a self-authenticated document that is presumptively reliable, and standing alone may be sufficient to prove a prior felony conviction"].)[13]

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13 Tulleys's argument regarding Evidence Code section 452.5 is not well focused, and at times he also appears to be arguing that *Duran* was incorrectly decided insofar as it held that certified court records are admissible "to prove not only the fact of conviction, but *also that the offense reflected in the record occurred*." (*Duran*, *supra*, 97 Cal.App.4th at p. 1460, italics added.) Tulleys contends that Evidence Code section 452.5 "does not allow the documents at issue to be admitted for the truth of the underlying events." We reject the argument. As *Duran* observed, the plain language of Evidence Code section 452.5, subdivision (b) states that certified court records are admissible " '*to prove the commission . . . of a criminal offense*.' " (*Duran*, at p. 1460.) *Duran*'s holding has been followed by numerous courts (*People v. Ochoa* (2017) 7 Cal.App.5th 575, 589, fn. 10; *People v. Rauen* (2011) 201 Cal.App.4th 421, 425; *People*

Although we conclude that all of the official certified court documents contained in Exhibits 2, 3, 4, 5 and 7 were admissible pursuant to Evidence Code section 452.5, subdivision (b)(1) over any hearsay objection, we find no applicable hearsay exception that pertains to the contents of Exhibit 6. As we have explained, the sole document contained in Exhibit 6 was a probation officer's report prepared prior to Tulleys's indecent exposure conviction in 1997, which set forth witness statements about the alleged crimes.

There are two problems with the admissibility of Exhibit 6. For one thing, nothing in the record establishes that Exhibit 6 is a certified court document, as it contains no signature from the clerk of the court or any other notation attesting to its authenticity "as a correct copy of the writing or entry by a public employee, or a deputy of a public employee, having the legal custody of the writing." (Evid. Code, § 1530, subd. (a)(2).) Thus, although the lack of a certification might simply have been due to an oversight by the People in compiling the exhibits and submitting them in the trial court, the content of the exhibit as it appears in the record nevertheless does not permit us to treat it as an official certified court record. More significantly however, even if the probation officer's report in Exhibit 6 was established to be a certified court record, the *victim statements* related by the probation officer's report would still not be admissible to prove the *truth* of those statements. Under Evidence Code section 452.5, subdivision (b)(1), a certified court record is admissible *only* "to prove the commission, attempted commission, or solicitation of a criminal offense, prior conviction, service of a prison term, or other act,

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v. Wesson (2006) 138 Cal.App.4th 959, 968; *People v. Lopez* (2005) 129 Cal.App.4th 1508, 1522, fn. 8), and Tulleys has cited no authority calling it into question.

condition, or event recorded by the record." Thus, although Exhibit 6 (if it was a properly certified court record) *could* be admitted to prove that a probation officer's report was prepared and filed, as that is the "event recorded by the record," Exhibit 6 *could not* be admitted to prove the underlying facts set forth in the report, which constitute hearsay statements from the victims of the alleged crimes.

b. *Exhibit 1—the 969b Packet*

Tulleys also contends that portions of the 969b packet contained in Exhibit 1 were improperly admitted hearsay. Specifically, Tulleys contends that the trial court improperly admitted all portions of Exhibit 1 that were not "for the purpose of proving the existence and details of [Tulleys's] qualifying offenses."[14]

Tulleys acknowledges that some of the items appearing in the 969b packets are innocuous and harmless, such as his fingerprints and photographs, and he does not specifically challenge their admission into evidence. However, Tulleys singles out the following items as the subject of his evidentiary challenge: (1) a computer printout of Tulleys's "Inmate Case Notes" showing an entry on August 7, 2015, identifying an "MDO/SVP Hold" for Tulleys and stating, "Positive for SVP. Do not parole without contact with county for Civil Commitment Proceedings;" (2) the abstracts of judgment showing Tulleys's non-qualifying convictions for indecent exposure and annoying or

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14 Tulleys also contends that those same portions of Exhibit 1 were irrelevant because they did not relate to his qualifying convictions. We reject the relevancy challenge. As we explained above with respect to the other exhibits, the entire content of Exhibit 1 was relevant at trial because Dr. Karlsson testified that he relied on Exhibit 1 in reaching his opinions.

molesting a child, and references to those convictions in other documents; (3) forms from the Federal Bureau of Investigations (FBI) which accompany Tulleys's fingerprints, and which indicate, in an abbreviated manner, that Tulleys violated parole on several occasions; and (4) any peripheral information about his qualifying convictions, such as the fines, sentences and custody credits associated with them.

The People contend that the entirety of the 969b packet was admissible over any hearsay objection. The People rely on Penal Code section 969b, which states "[f]or the purpose of establishing prima facie evidence of the fact that a person being tried for a crime or public offense under the laws of this State has been convicted of an act punishable by imprisonment in a state prison, county jail or city jail of this State, and has served a term therefor in any penal institution, . . . the records or copies of records of any state penitentiary, reformatory, county jail, city jail, or federal penitentiary in which such person has been imprisoned, when such records or copies thereof have been certified by the official custodian of such records, may be introduced as such evidence." (Pen. Code, § 969b.) Tulleys argues that Penal Code section 969b does not apply in this proceeding under the SVPA to allow the admission of prison records because a person on trial under the SVPA is not "being tried for a crime or public offense under the laws of this State." (*Ibid.*)

We agree that Penal Code section 969b is not applicable here. A proceeding under the SVPA is a civil commitment proceeding, not a trial for "a crime or public offense" as that term is used in Penal Code section 969b. (See *Hubbart v. Superior Court*, *supra*, 19 Cal.4th at pp. 1143-1144 [explaining that the SVPA is a civil commitment scheme, and

observing that "no punitive purpose was intended" by the Legislature]; *Moore, supra*, 50 Cal.4th at p. 818 ["SVP proceedings are civil, not criminal, in nature"].) Although case law has approved the admission of documents from 969b packets in SVP proceedings, a close examination of those cases show that the documents were admissible because they related to an alleged SVP's qualifying sexually violent offense and thus were admissible under Welfare and Institutions Code section 6600, subdivision (a)(3), not because they were directly admissible under Penal Code section 969b. (See *People v. Dean* (2009) 174 Cal.App.4th 186, 195-196 [the 969b package was admissible to show qualifying sexually violent offenses]; *Burroughs*, *supra*, 6 Cal.App.5th at p. 395, fn. 5 [defense counsel did not object to admission of 969b packet, which contained abstracts of judgment for defendant's qualifying sexually violent offenses; the court observed that "Penal Code section 969b authorizes the People to prove the existence of prior convictions in a criminal case by introducing certified copies of prison records," and "[t]he People may use such records for the same purpose in SVP cases"]; but see *People v. Roa* (2017) 11 Cal.App.5th 428, 444 [concluding, without relying on Welf. & Inst. Code, § 6600, subd. (a)(3), that the 969b packet was admissible in an SVPA proceeding to show prior convictions, which were qualifying sexually violent offenses].)

Some of the documents in the 969b packet were nevertheless admissible under Evidence Code section 1280 as "[e]vidence of a writing made as a record of an act, condition, or event . . . to prove the act, condition, or event" when "made by and within the scope of duty of a public employee," made "at or near the time of the act, condition, or event" and when "[t]he sources of information and method and time of preparation

were such as to indicate its trustworthiness." (Evid. Code, § 1280.) Most clearly falling under this hearsay exception are the abstracts of judgment contained in the 969b packets. (See *People v. Delgado* (2008) 43 Cal.4th 1059, 1070-1071 [discussing admissibility of abstract of judgment as "a contemporaneous, statutorily sanctioned, officially prepared clerical *record* of the conviction and sentence," which "[w]hen prepared by the court clerk, at or near the time of judgment, as part of his or her official duty, it is cloaked with a presumption of regularity and reliability"].)

2. *Expert Testimony*

In *Sanchez, supra,* 63 Cal.4th 665, our Supreme Court held that "[w]hen any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert's opinion, the statements are hearsay." (*Id.* at p. 686.) Thus, although an "expert may still *rely* on hearsay in forming an opinion, and may tell the jury *in general terms* that he did so" (*id.* at p. 685), an expert may not "relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception." (*Id.* at p. 686.) "The *Sanchez* rule applies to civil SVP proceedings." (*People v. Bocklett* (2018) 22 Cal.App.5th 879, 890.) Tulleys contends that Dr. Karlsson's testimony related hearsay statements that were not otherwise properly admitted into evidence or covered by a hearsay exception. Tulleys focuses on two aspects of Dr. Karlsson's testimony.

First, Tulleys contends Dr. Karlsson improperly testified to the details of the 1997 indecent exposure conviction contained in the probation officer's report appearing in

Exhibit 6 because those details were based on hearsay statements made by the victims. We agree. As we have explained, no applicable hearsay exception permitted the admission of the hearsay statements contained in Exhibit 6. Accordingly, it was also improper under *Sanchez* for Dr. Karlsson to testify to those hearsay statements.

Second, Tulleys contends that Dr. Karlsson improperly "testified to the sentences [Tulleys] received and the existence of parole violations." Specifically, Tulleys is referring to statements made by Dr. Karlsson on redirect examination in response to questions about the period that Tulleys spent in prison, apparently directed at countering the suggestion made by Tulleys's counsel during cross-examination, that there were long periods when Tulleys did not commit any sex crimes against children.

> "Q: When you reviewed Mr. Tulleys's criminal history, between 1991 and 2004, he was in prison several times, right?
>
> "A: That's correct.
>
> "Q: All right. He got sentenced to 6 years in 1991, right?
>
> "A: Yes.
>
> "Q: And then 32 months in 1996?
>
> "A: That's correct.
>
> "Q: And 32 months again in 1999?
>
> "A: That's correct.
>
> "Q: And he had five parole violations where he went back to prison between 1991 and 2004 as well?
>
> "A: That's correct."

We reject Tulleys argument to the extent he contends that Dr. Karlsson improperly testified about the sentences that Tulleys received for his convictions. That information was contained in abstracts of judgment, which, as we have explained, were properly admitted pursuant to Evidence Code section 452.5, subdivision (b) and Evidence Code section 1280. The fact that Tulleys had parole violations, however, was not set forth in any admissible document but instead was tangentially referenced in inadmissible portions of the 969b packet. Specifically, the parole violations are referenced in an abbreviated manner in forms from the FBI that accompany each set of Tulleys's fingerprints contained in the 969b packet. We are aware of no applicable hearsay exception that would apply to the parole violation notations contained in those fingerprint coversheets, and the People did not attempt to establish the foundation for any such exception. Accordingly, Dr. Karlsson improperly testified, based on inadmissible documents, that Tulleys had five parole violations between 1991 and 2004.

B. *Only Certain Evidentiary Challenges Were Preserved*

Having established which of Tulleys's appellate challenges to the admission of evidence are meritorious, we now consider whether any of those challenges were preserved by an objection from Tulleys's trial counsel. To preserve an evidentiary objection, counsel must assert an objection on the specific ground raised on appeal. (*People v. Rundle* (2008) 43 Cal.4th 76, 116 [" 'Evidence Code section 353, subdivision (a) allows a judgment to be reversed because of erroneous admission of evidence only if an objection to the evidence or a motion to strike it was "timely made and so stated as to make clear the specific ground of the objection." Pursuant to this

statute, " 'we have consistently held that the "defendant's failure to make a timely and specific objection" on the ground asserted on appeal makes that ground not cognizable.' " ' "]; *People v. Dykes* (2009) 46 Cal.4th 731, 756 ["trial counsel's failure to object to claimed evidentiary error on the same ground asserted on appeal results in a forfeiture of the issue on appeal"].)

Based on our previous discussion, the evidence to which meritorious objections could have been made consists of the following: (1) the admission of Exhibit 6 (the probation officer's report from the 1997 indecent exposure conviction); (2) the admission of Dr. Karlsson's testimony describing the content of the probation officer's report appearing in Exhibit 6; (3) the admission of portions of the 969b packet that were not otherwise admissible either (a) as evidence relating to Tulleys's qualifying sexual offenses pursuant to Welfare and Institutions Code section 6600, subdivision (a)(3), or (b) as public records—such as abstracts of judgment—admissible under Evidence Code section 1280; and (4) Dr. Karlsson's testimony that Tulleys incurred parole violations. We consider, in turn, whether objections were made at trial to any of that evidence.

(1) *The probation officer's report in Exhibit 6*: During trial, Tulleys's counsel objected to the admission of Exhibit 6 on relevance grounds only, stating that probation officer's report related to a conviction that was not a qualifying sexually violent offense and thus the document was not relevant. The trial court overruled the relevancy objection, noting that the document was relevant because Dr. Karlsson had relied on it. As counsel did not assert an objection based on hearsay, he did not preserve an appellate

challenge to the admission of Exhibit 6 based on the basis that it was inadmissible hearsay.

(2) *Dr. Karlsson's testimony about the contents of the probation officer's report in Exhibit 6*: Although Tulleys's counsel did not interpose an objection during Dr. Karlsson's testimony about the probation officer's report, at the beginning of trial, relying on *Sanchez, supra*, 63 Cal.4th 665, Tulleys's counsel argued that "with reference to the other crimes for which Mr. Tulleys has been charged and/or convicted . . . without direct evidence from those victims . . . the expert witnesses are not able to give a recitation of those facts because they would be hearsay." Tulleys's counsel made the same objection in his trial brief. Accordingly, we conclude that Tulleys has sufficiently preserved an evidentiary objection to Dr. Karlsson's testimony to the extent it was based on the inadmissible hearsay contained in Exhibit 6.

(3) *The 969b packet*: During trial, the deputy district attorney requested to introduce into evidence the 969b packet contained in Exhibit 1. Counsel for Tulleys stated, "No objection." Therefore, Tulleys did not preserve an objection to the introduction of the 969b packet.

(4) *Dr. Karlsson's testimony about the parole violations in the 969b packet*: Tulleys's counsel did not interpose an objection during Dr. Karlsson's testimony about the parole violations reflected in the 969b packet. However, as we have explained, Tulleys's counsel did object in limine to the admission of any testimony from Dr. Karlsson relating to inadmissible hearsay. Therefore, to the extent the evidence of Tulleys's parole

violations was inadmissible hearsay, Tulleys sufficiently preserved an objection to Dr. Karlsson's testimony on that issue.

In summary, based on the above, only Tulleys's appellate challenge to the admission of (1) Dr. Karlsson's testimony about the probation officer's report, and (2) Dr. Karlsson's testimony about Tulleys's parole violations was sufficiently preserved for appeal.

As to the evidentiary arguments that were not preserved for appeal, Tulleys contends that we should nevertheless provide him relief because he received ineffective assistance of counsel. Specifically, Tulleys contends that his trial counsel was ineffective for failing to object to inadmissible hearsay evidence.[15] The ineffective assistance argument therefore applies to the admission of (1) the probation officer's report in Exhibit 6, and (2) certain items in the 969b packet.

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15 Tulleys was not a criminal defendant in this proceeding and therefore may not claim the protection of the right to counsel in the Sixth Amendment to the United States Constitution (U.S. Const., 6th Amend. ["In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence"].) However, as the subject of a civil petition under the SVPA, Tulleys had a right to the effective assistance of counsel, which arises from the statutory right to counsel set forth in Welfare and Institutions Code section 6603, subdivision (a) ["[a] person subject to this article shall be entitled to . . . the assistance of counsel"] and from the fact that a proceeding under the SVPA affects a person's liberty interests, giving rise to due process protections. (See *People v. Hill* (2013) 219 Cal.App.4th 646, 652 [the subject of an SVP proceeding was entitled to a *Marsden* hearing to effectuate his right to effective representation]; *People v. Smith* (2013) 212 Cal.App.4th 1394, 1407-1408 & fn. 7 [the Attorney General did not question that the subject of an SVP hearing was constitutionally entitled to the effective assistance of counsel]; see also *Addington v. Texas* (1979) 441 U.S. 418, 425 ["civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection"].)

C. *Tulleys Has Failed to Establish Prejudice*

The final issue we consider is prejudice. The requirement that Tulleys establish prejudice applies *both* to Tulleys's direct challenge to the admission of the two items of erroneously admitted evidence to which trial counsel objected (i.e., Dr. Karlsson's testimony about Exhibit 6 and about Tulleys's parole violations), *and* to Tulleys's contention that he received ineffective assistance of counsel (i.e., based on counsel's failure to object to the admission of Exhibit 6 and a portion of the 969b packet).

Specifically, with respect to Tulleys's direct appeal challenging the erroneous admission of testimony by Dr. Karlsson, " 'the erroneous admission of expert testimony,' including expert testimony containing inadmissible case-specific hearsay statements, is reviewed under the *Watson* standard" (*People v. Flint* (2018) 22 Cal.App.5th 983, 1003), under which reversal is warranted only if "it is *reasonably probable* that a result more favorable to the appealing party would have been reached in the absence of the error." (*People v. Watson* (1956) 46 Cal.2d 818, 836, italics added.) Similarly, to prevail in a claim for ineffective assistance of counsel, Tulleys must show, not only that his counsel's performance "fell below an objective standard of reasonableness" (*Strickland v. Washington* (1984) 466 U.S. 668, 688), but that "there is *a reasonable probability* that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." (*Id.* at p. 694, italics added.) Under this standard, Tulleys must "prove

prejudice that is a ' "demonstrable reality," not simply speculation.' " (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1241.)[16]

As we will explain, when we consider all four of the erroneously admitted items of evidence, Tulleys has not met his burden to show that it is reasonably probable that he would have achieved a more favorable result had the evidence been excluded. Accordingly, Tulleys's direct challenge to the admission of the evidence and his ineffective assistance of counsel claims are without merit.

We first consider the admission of (1) the probation officer's report relating to Tulleys's 1997 conviction for indecent exposure, and (2) Dr. Karlsson's testimony describing the contents of that report. Tulleys has not shown that the contents of the probation officer's report were particularly significant to the outcome of his SVP proceeding. Most significantly, although the probation officer's report provided detail about the indecent exposure incident and about a similar incident for which Tulleys was charged but not convicted, the fundamental nature of Tulleys's sexually inappropriate conduct toward a girl was already in evidence. Specifically, as we have described, Tulleys told Dr. Karlsson that he intentionally exposed his penis to a girl as she walked by an outhouse at a construction site. The probation officer's report added the further details that the girl was in middle school, that there were two other girls with her, that Tulleys used profanity, and that Tulleys followed the girls down the street. Further, the

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16 The standard for establishing ineffectiveness of counsel in the context of a criminal trial is well established, which we rely upon here. The People do not question that these same standards apply to the right to counsel in a proceeding under the SVPA.

probation officer's report stated that on another day, at that same construction site, Tulleys was seen by one of the girls masturbating in his truck. We perceive no reasonable possibility that the trial court would have concluded that the People failed to meet their burden to establish that Tulleys was an SVP had the details in the probation officer's report been excluded from evidence. As Dr. Karlsson explained, the 1997 indecent exposure incident was pertinent because it supported his conclusion that Tulleys had pedophiliac disorder and exhibitionist disorder. Regardless of whether the details of the probation officer's report were admitted into evidence, the admission that Tulleys made to Dr. Karlsson amply supported the diagnosis of those two disorders, as Tulleys version of events showed that Tulleys exposed himself in public and that he directed his sexual behavior toward a girl.

The next item of inadmissible evidence is Dr. Karlsson's testimony about Tulleys's history of parole violations. Specifically, as we have explained, Dr. Karlsson testified that between 1991 and 2004 Tulleys had five parole violations, for which he was sent back to prison. Tulleys has not established that it is reasonably probable he would have obtained a more favorable outcome at trial if Dr. Karlsson had not testified about the parole violations. The fact that Tulleys was returned to prison because of unspecified parole violations has little, if any, logical relationship to the issues presented in the SVP proceeding and thus the admission of the evidence did not likely affect the outcome.

The final category of inadmissible evidence consists of certain inadmissible documents contained in the 969b packet that Tulleys contends were prejudicial to him. According to Tulleys, the prejudicial documents consist of (1) the reference in several

documents to the fact that Tulleys had violated parole (2) a computer printout of Tulleys's "Inmate Case Notes" showing an entry on August 7, 2015, identifying an "MDO/SVP Hold" for Tulleys and stating, "Positive for SVP. Do not parole without contact with county for Civil Commitment Proceedings;"; and (3) peripheral information about his qualifying convictions, such as the fines, sentences and custody credits associated with them.[17] In our view, none of the evidence identified by Tulleys could have materially affected the outcome of the SVP proceeding. First, with respect to the information about Tulleys's parole violations, we have explained that the information about Tulleys's parole violations was extremely peripheral to the issues in the SVP proceeding and could not have had a material effect on the outcome. Second, regarding the document indicating that on August 7, 2015, Tulleys was identified as subject to "MDO/SVP Hold" and "Positive for SVP," that information was not prejudicial because it would have already been known by the trial court. Specifically, the comments related to the fact that Tulleys was the subject of the *instant* SVP proceeding, which was filed in August 2015. Finally, we perceive no manner in which information peripherally related to Tulleys's convictions for his two qualifying sexually violent offenses, such as fines, sentences and custody credits, would have materially affected the trial court's finding as to whether the People proved that Tulleys qualified as an SVP. Moreover, much of the information about fines

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17 Tulleys also contends that abstracts of judgment in the 969b packet were improperly admitted into evidence. However, as we have explained, those documents were properly admitted under Evidence Code section 1280 as public records.

and sentences is duplicative of the properly admitted information contained in the certified court records contained in Exhibits 2 through 5 and 7.

In sum, as we conclude that it is not reasonably probable that Tulleys would have achieved a more favorable result at trial had the inadmissible evidence not been presented, we reject both Tulleys's direct appeal based on the admission of that evidence as well as Tulleys's contention that he received ineffective assistance of counsel.

DISPOSITION

The judgment is affirmed.

IRION, J.

WE CONCUR:

NARES, Acting P. J.

O'ROURKE, J.